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OFFICE OF PETITIONS

In re Application of :
Brittingham et al. :
Application No. 10/758,274 : ON PETITION
Filed: 16 January, 2004 :
Atty Docket No. 7767-200246 :

This is a decision on the renewed petition filed on 24 September, 2004, requesting that the above-identified application be accorded a filing date of 16 January, 2004, with Figures 8 & 9 described in the specification of the specification as a part of the original disclosure.

The petition is granted.

The application was filed on 16 February, 2004.

Accordingly, on 28 April, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, stating that the application had been accorded a filing date of 16 January, 2004, but that Figures 8 & 9 described in the specification appeared to have been omitted. Additionally, applicants were advised that the statutory basic filing fee, the oath or declaration, and a surcharge for their late filing was due. The petition filed on 25 June, 2004, was dismissed on 25 August, 2004.

In response, on 24 September, 2004, the present request for reconsideration was filed. Petitioners again assert that the sheets of drawings containing Figures 8 & 9 were filed with the other application papers on 16 January, 2004, but were subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an Office date stamp of 16 January, 2004, and identifies the application by the first named inventor's name, and attorney docket number, and acknowledges receipt of, *inter alia*, "Formal Drawings (10 sheets, 1-11 Figs.)". Petitioners request that the

application, including two (2) sheets of drawings containing Figures 8 & 9 described in the specification, be accorded a filing date of 16 January, 2004. Petitioners have requested that the originally filed paper copy of the application papers be reviewed.

A review of the original application papers reveals that two (2) pages containing Figures 8 and 9 are among the application papers received on 16 January, 2004. As such, the evidence is convincing that the application papers received on 16 January, 2004, included two (2) sheets of drawings containing Figures 8 and 9.

The application will be processed and examined using the copy of the two (2) sheets of drawings containing Figures 8 and 9 submitted with the original application papers.

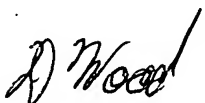
As the petition resulted from an error on the part of the Office, the petition fee will be credited to counsel's deposit account, No. 22-0261.

The application will be processed and examined using the application papers present on filing, including the two (2) sheets of drawings containing Figures 8 and 9.

The address on the present petition is different than the address of record. A courtesy copy of this petition will be forwarded to the address on the petition. All future correspondence, however, will be mailed solely to the address of record.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 16 January, 2004, using the application papers, including two (2) sheets of drawings containing Figures 8 and 9, filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.



Douglas I. Wood
Senior Petitions Attorney
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¹ See In re Colombo Inc., 33 USPQ2d 1530, 1532. (Comm'r Pat. 1994).
² Id.